IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2517 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

MOHMAD RAFIK SULTAN MIRZA
Versus
STATE OF GUJARAT AND OTHERS

==========

Appearance :
MS BANNA DUTTA for MR AR SHAIKH for Petitioner.
RULE SERVED BY DS for Respondent(s) : 1 - 2.
MR ND GOHIL, AGP for Respondent No. 3.

==========

CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 29/06/2006

ORAL JUDGMENT

By filing this petition, the petitioner has challenged his detention order dated 27-1-2006, by which the petitioner is detained as a “bootlegger” under Gujarat Prevention of Anti Social Activities Act [hereinafter referred to as PASA Act]. With the detention order, the

petitioner is also served with the grounds of detention. In the grounds of detention, there is a reference to a solitary case pending against the petitioner. The aforesaid case is registered with Katargam Police Station, being Gunah Register No.III-38/2006 under the Bombay Prohibition Act. It is alleged that the petitioner is dealing in foreign liquor.

Ms.Dutta, learned advocate for the petitioner submitted that except a solitary criminal case, there is no other material available for coming to the conclusion that the petitioner is a "bootlegger". She further submitted that no statement of any independent witness is recorded by the detaining authority for coming to the conclusion that the activities of the petitioner are prejudicial to public order or even tempo of public life is disturbed by his activities. It is submitted that at the most it can be said that the petitioner has violated law and order and not public order. In order to substantiate her say, learned advocate for the petitioner has also relied upon the decision of the Supreme Court in District Collector, Ananthapur and another vs. V. Laxmanna reported in 2005 AIR SCW 1822. In the aforesaid case, the Supreme Court has observed as under in paragraphs 7 and 8 :

> "7. We do not think this argument of the learned counsel can be accepted. If the detention is on the ground that the detenu is indulging in manufacture or transport or sale of arrack then that by itself would not become an activity prejudicial to the maintenance of public order because the same can be effectively dealt with under the provisions of the Excise Act but if the arrack sold by the detenu is dangerous to public health then under the Act, it becomes an activity prejudicial to the maintenance of public order, therefore, it becomes necessary for the detaining authority to be satisfied on material available to him that the arrack dealt with by the detenu is an arrack which is dangerous to public health to attract the provisions of the Act and if the detaining authority is satisfied that such material exists either in the form of report of the Chemical Examiner or otherwise copy of such

material should also be given to the detenu to afford him an opportunity to make an effective representation.

8. Therefore, while holding that dealing with arrack which is dangerous to public health would become an act prejudicial to the maintenance of public order attracting the provisions of the Act. It must be held that it is obligatory for the detaining authority to provide the material on which it has based its conclusion on this point. Therefore, we are in agreement with the High Court that if the detaining authority is of the opinion that it is necessary to detain a person under the Act to prevent him from indulging in sale of goods dangerous for human consumption the same should be based on some material and the copies of such material should be given to the detenu."

Mr.N.D.Gohil, learned AGP has submitted that it is true that except solitary case, there is no other material against the petitioner. Accordingly, learned AGP is not in a position to substantiate his say that the activities of the petitioner are prejudicial to public health.

Considering the aforesaid aspect of the matter as well as after considering the judgement of the Supreme Court and considering the fact that there is nothing to show that the activity of the petitioner is prejudicial to public health, at the most it can be said that the petitioner is guilty of violating law and order but it cannot be said that the activity of the petitioner is prejudicial to public health. Therefore, the impugned order of detention is required to be quashed and set aside.

In order to see that the petitioner is not tempted to repeat the offence, learned advocate for the petitioner has made a voluntary statement that the petitioner will not enter Commissionerate area of Surat city upto 31st October, 2006 except for attending pending criminal cases. This voluntary statement is recorded, it is for the concerned authority to monitor the same.

In view of what is stated herein above, this petition is allowed. Order of detention dated 27-1-2006 is quashed and set aside. Petitioner – Mohmad Rafik Sultan Mirza is ordered to be released forthwith unless his presence is required in connection with any other case. Rule is made absolute with no order as to costs.

(P.B.MAJMUDAR, J.)

/malek